

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 18, 2010 the Landlord served the Tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenants were served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants;
- A partial copy of a residential tenancy agreement which was signed by the parties on August 4, 2009 for fixed term tenancy beginning June 16, 2007, expiring May 31, 2008 and continuing on a month to month basis thereafter for the monthly rent of \$995.00 due on 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 3, 2010 with an effective vacancy date of May 13, 2010 due to \$1,031.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenants failed to pay the rent owed for the month of May 2010 and that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenants' rental unit on May 3, 2010. The Notice states that the Tenants had five days to pay the rent or

apply for Dispute Resolution or the tenancy would end. The Tenants did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all of the documentary evidence and accept that the Tenants have been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenants on May 6, 2010, and the effective date of the Notice is amended to May 16, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find pursuant to s. 55(2)(b) of the *Act* that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord provided an incomplete copy of a tenancy agreement which states a different amount of rent from that claimed on the Landlord's application. The amount of the security deposit is also cut off of the copy of the tenancy agreement provided by the Landlord as evidence. Consequently, I find that a conference call hearing is required in order to obtain further evidence in order to determine the amount of monetary compensation the Landlord is entitled to for unpaid rent. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenants within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 26, 2010.

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Dispute Resolution Officer